

HLG on simplification
Financial instruments in EU legislation
and para-legislation

Brussels, February 2016

Purpose of the presentation

1. Short introduction to FIs
2. Providing description of the current state of play in the context of legislative background
3. Defining the main obstacles in efficient implementation of FIs
4. Suggestions for improvement

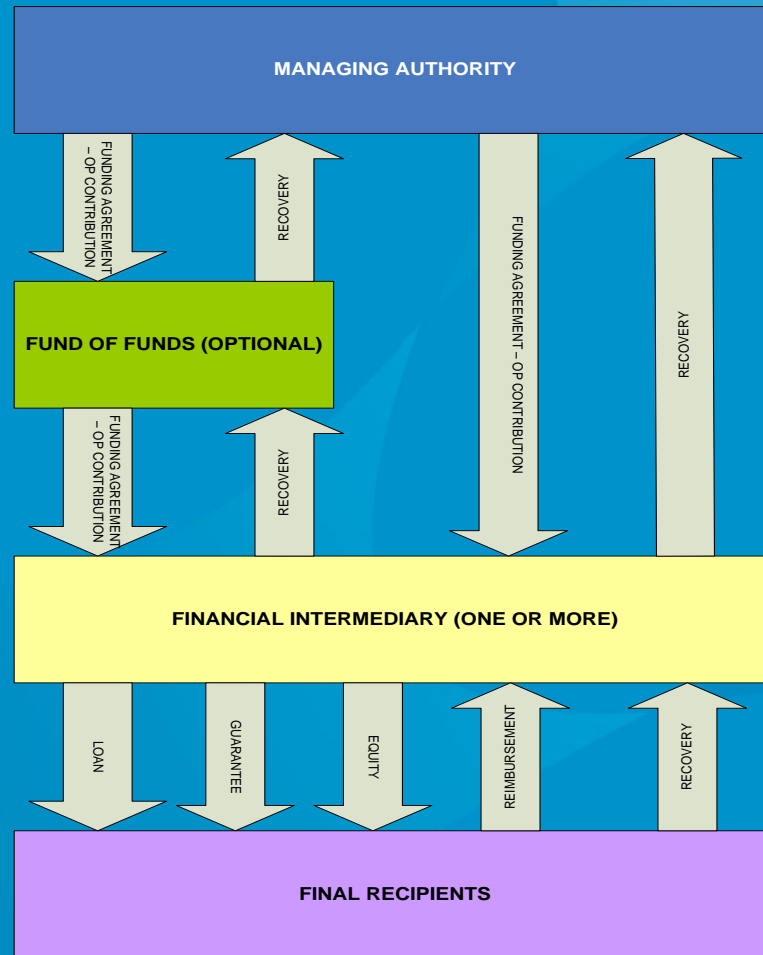
FIs – general approach

- Ambition to make much greater use of financial instruments in the EU (reflected in both the Juncker Plan and the Council recommendations on broad economic policy guidelines)
- The aim to promote loans, guarantees and equities as the suggested tools of cohesion policy was to deliver money to beneficiaries / final recipients in the fast, efficient, simple and smart way
- FIs can not be treated like grants
- Specificity of financial products and their diversity require a flexible approach in applying specific requirements and regulations
- Legal certainty as the key to successful FIs implementation

The nature of FIs – CPR perspective

- Financial instruments supported by the ESI Funds should be used to address specific market needs in a cost effective way, in accordance with the objectives of the programmes, and should not crowd out private financing
- The decision to finance support measures through financial instruments should be determined on the basis of an ex ante assessment
- Financial instruments should be designed and implemented so as to promote substantial participation by private sector investors and financial institutions on an appropriate risk-sharing basis
- To be sufficiently attractive to the private sector, it is essential that financial instruments are designed and implemented in a flexible manner. Managing authorities should therefore decide on the most appropriate forms for implementing financial instruments in order to address the specific needs of the target regions, in accordance with the objectives of the relevant programme

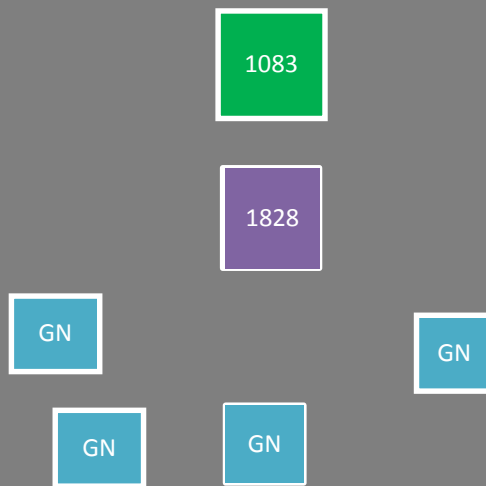
FIs implementation scheme



EU legal acts and COM guidance notes in perspectives 2007-2013 and 2014-2020

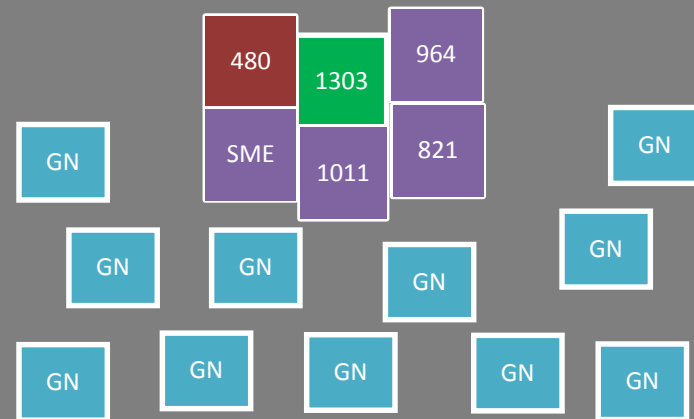
2007-2013 PERSPECTIVE

- Regulation No. 1083/2006
- Regulation No. 1828/2006
- 4 guidance notes (incl. 1 still pending as of January 2016)



2014-2020 PERSPECTIVE

- Regulation No. 1303/2013
- Commission Delegated Regulation No. 480/2014
- 3 COM implementing regulations and 1 implementing decision (SME initiative)
- 11 guidance notes incl. 3 still pending as of January 2016 (and more to be adopted in the future?)



Still pending

According to the Commission:

- Guidance note on preferential remuneration – final version expected in January 2016
- Guidance note on treasury management – final version expected in January 2016
- Guidance note on FEI corrections 2007-2013 –updated final version expected in January 2016
- Guidance note on selection of bodies – second discussion scheduled for 24 February 2016 – final version expected in ...?



EUROPEAN COURT OF AUDITORS Special report 2/2012 FINANCIAL INSTRUMENTS FOR SMEs CO-FINANCED BY THE EUROPEAN REGIONAL DEVELOPMENT FUND

Main findings

(...)

I. Quality of the assessment of the SME financing gap

II. The Commission should provide a more adequate regulatory framework so that the design and the implementation of financial engineering measures do not suffer from the deficiencies of the Structural Funds' regulatory framework, geographical constraints and scattering effects

III. The Commission should provide a reliable and technically robust monitoring and evaluation system specific to financial instruments. (...) the Commission and the Member States should agree on a small number of measurable, relevant, specific and uniform result indicators for financial instruments (...)

IV. The implementation of financial instruments for SMEs through the ERDF has been affected by widespread delays. Some of the reasons for delays during the 2000–06 programming period have recurred in the 2007–13 programming period.

(...)

Problem areas

- Legal uncertainty and changing interpretations
- Practical aspects of application of public procurement law in the process of selection of bodies implementing FIs (delays in delivering aid, higher costs of aid for final recipients)
- Scope of information required from FIs' final recipients
- Disproportionate control and audit (sound financial management)

Legal uncertainty

Arbitrary interpretation of EU regulations in Commission guidance notes triggers discussions of semantic nature instead of focusing on designing the best and simplest implementation mechanisms but also brings questions on legal certainty

EXAMPLE General regulation 1303/2013 art. 37

Combination of support – unjustified restriction of combination to only those cases where the option of covering the same expenditure item explicitly provided by Art. 37(9) is not used – **increases complexity**, destroys transparency, creates audit risks, leads to inevitable funding gap and **defeats the whole purpose of combination**

Public procurement of doubts

Why public procurement procedures should not be the primary method to select bodies implementing Fis:

- Rigid structure of public procurement contract – obligation to predict in advance all implementation aspects is a minefield for MAs and intermediaries – direct bearing on final recipients
- Limited duration of public procurement contract – 4 year duration vs. FIs as a long-term public intervention addressing market failures – who will be responsible for settlement of a loan which was granted for 10 years?
- Award of contract based on lowest price / most economically advantageous tender criteria – who will prevail? Economic operators capable of **providing the best services** for final recipients? Or rather these offering the lowest price at the expense of lower performance?
- How to attract private investors if they can't be sure that the contract would not be terminated because of unnecessary administrative provision?

Scope of information required from FIs' final recipients / sound financial management

Example of the provision opening way to the *gold-plating* or *euro-plating* or rather *COM-plating* and leading to beneficiaries' and final recipients' COMplaining

Commission Delegated Regulation No 480/2014:

Article 9 Management and control of financial instruments set up at national, regional transnational or cross-border level

(...) For operations involving support from programmes to financial instruments set up at national, regional transnational or cross-border level referred to in Article 38(1)(b) of Regulation (EU) No 1303/2013, the managing authority shall ensure that:

(e) supporting documents allowing verification of compliance with Union and national law and with the conditions of funding include at least:

(xi) evidence that the support provided through the financial instrument was used for its intended purpose; (...)

	FI	BANK I	BANK II
Governing documents	V		
Articles of Association	V	V	V
Application form	V		
Business plan	V	V	V
National Official Business Register certificate	V		
Decision on assigning NIP (VAT identification number)	V		
Authorization to request for disclosure of information from Credit Information Bureau	V	V	V
Confirmation from the Social Insurance Institution of no outstanding payments	V		
Confirmation from the Tax Office of no outstanding payments	V		
Statement of no criminal conviction	V		
Accounts for the last closed financial year	V		
Accounts for the last closed financial year – related companies	V		
Identification of related companies			V
Annual (PIT/CIT) return for the previous year	V	V	V
Statement on validity of documents	V		
Governing documents of the related companies	V		
Information on de minimis aid received over the last three income tax years	V		
Statement on amount of de minimis aid received in the respective period	V		
Form for information to be provided when applying for de minimis aid	V		
Information on Board members income	V	V	V
Information on partners' income	V		V
Marriage contract - from each Board member / spouse's written agreement for incurring a credit - from all Board members	V	V	V
Specific documents concerning investment	V		

	GRANT	FI
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Marriage contract - from each Board member / spouse's written agreement for incurring a credit - from all Board members		V
Specific documents concerning investment	V	V
Documents confirming the right to administer the real estate or premises in which the operation is to be located	V	
Statement on fulfilling the SME criteria	V	
Material and financial schedule of the operation	V	
Form confirming operation's compliance with demarcation line between ROP and RDP (micro-enterprises only)	V	
Copy of valid building permit	V	

Room for improvement (I)

Para-legislation at the level of the European Commission

- The Commission should take into account the ECA Special report 2/2012 recommendations bearing in mind that attaining the objectives established for the FIs is possible only by focusing on delivering mechanisms providing FIs effectiveness and relevance rather than trying to establish ultra-precise and complicated procedures for the FIs implementation
- para-legislation (namely Commission guidance notes) should be revised and amended where necessary and / or deleted where necessary
- adjustments can be done relatively fast (3 months?)
- instead of preparing new guidelines, the Commission should focus on promoting best practices (eg. a guide on eligibility of expenditure)
- *Guidance note on selection of bodies* – minimum standard for the competitive procedure should be prepared, which will allow to fulfil standards set up in art. 7 of the Commission Delegated Regulation No 480/2014 without necessity to use public procurement procedures

Room for improvement (II)

ECA, EC audit

- new requirements should not be imposed without taking into account differentiation of particular forms of financial products; scope of information and documents provided by final recipients should vary depending on the type of financial instrument (invoice may be an evidence in the case of a loan but should not be required in the case of guarantees)
- avoiding cannibalism among FIs at EU and national level (e.g. in Poland overlapping of two instruments financed from EU sources:
guarantees for social enterprises in Poland for 2014-2020
vs.
EaSI Programme 2014-2020 - Guarantees for social enterprises for 2016-2018)

Room for improvement (III)

Member States

- legislation and para-legislation should be revised and amended where necessary or deleted where necessary
- financial instruments should not be subject to leakage effects in terms of management costs at the level of final recipients (obligations to collect documents and store records, excessive reporting obligations consuming time and financial resources)

Room for improvement (IV)

Certain unjustified rules which limit wider use of FIs MAY follow from unclear, excessive or insufficient regulatory framework hence:

- a working group, consisting of *inter alia*, experts from MAs, EIB, EIF, national promotional banks and business representatives could be established
- a purpose-driven discussion among the group members should be launched - each stakeholder (especially representing entities close to the SMEs) should express his understanding of given provisions at EU level and problems that stem from their application
- as a result, adjustments of such provisions could be proposed, taking into account the overall objective

References

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Thank you for your attention